

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PUBLIC LOAN COMPANY,
INCORPORATED, doing business as
THE DEBEVOISE COMPANY,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

The United States of America, at the request of the Administrator of the Environmental Protection Agency ("EPA"), alleges that:

1. This is a civil action instituted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by and also known as the Resource Conservation and Recovery Act, as amended ("Act" or "RCRA"), 42 U.S.C. §6928(a) and (g), to obtain injunctive relief and civil penalties against Defendant Public Loan Company, Incorporated for violations of the requirements of Subtitle C of the Act, 42 U.S.C. §§6921-6934.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331, 1345, and 1355, and 42 U.S.C. §6928.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) because the claims stated herein arose in this judicial district and defendant is doing business in this judicial district; and pursuant to Section 3008(a) of the Act, 42 U.S.C. §6928(a), because the violations of the Act complained of herein occurred in this judicial district.

DEFENDANT

4. Defendant Public Loan Company, Inc. ("Public Loan") is a corporation organized and existing under the laws of the State of New York. Public Loan is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. §6903(15).

5. Public Loan at relevant times did business and does business as "The Debevoise Company" ("Debevoise"). Debevoise operated at relevant times and operates, at 74 20th Street, Brooklyn, Kings County, New York, a plant that manufactured and manufactures paint for industrial maintenance and for consumer products.

6. Debevoise produced at relevant times and produces hazardous wastes in the cleaning of paint mixing vats with xylene. Debevoise produces approximately 500 drums of waste xylene per year and approximately 100 drums of sludge per year from the cleaning process.

7. Pursuant to Section 3005 of Subtitle C of RCRA, 42 U.S.C. §6925, all treatment, storage and disposal ("TSD") facilities must have a RCRA permit issued by EPA (or a State which has been authorized by EPA to do so). Pursuant to Section 3005(e), TSD facilities which, inter alia, were in existence on the date on which EPA's implementing hazardous waste management regulations became effective (November 19, 1980) and filed a permit application by that date, are provided with "interim status." Section 3005(e) provides that a facility with interim status "shall be treated as having been issued such permit until such time as final administrative disposition of such application is made. . . ."

8. Debevoise notified EPA on November 14, 1980 that its Brooklyn plant "treated, stored, or disposed of hazardous wastes" and submitted to EPA a RCRA Part A Application for the required permit. The submission of the form entitled "Notification of Hazardous Waste Activity" and the application to EPA by this existing facility, inter alia, qualified Debevoise for "interim status," under which EPA treats Debevoise as having been issued an interim RCRA permit for those activities listed on its permit application. As a facility with "interim status," Debevoise is required to comply with the hazardous waste management regulations, including

"Interim Status Standards." See 40 C.F.R. Part 265 and 40 C.F.R. §122.23 (recodified in 40 C.F.R. §270.70 et seq.)

9. On June 15, 1982, when EPA inspected the Debevoise plant in Brooklyn, Debevoise was in violation of a number of RCRA Interim Status Standards and other applicable regulations. The violated standards related, inter alia, to storage practices, container and drum management, and recordkeeping requirements. In violation, Debevoise (a) stored hazardous wastes in drums outside the facility in violation of 40 C.F.R. §265.14, (b) stored hazardous wastes in leaking drums in violation of 40 C.F.R. §265.31, (c) failed to maintain adequate aisle space in a hazardous waste drum storage area in violation of 40 C.F.R. §265.35, (d) failed to maintain a written operating record in violation of 40 C.F.R. §265.73, (e) stored hazardous wastes in rusting or bulging drums in violation of 40 C.F.R. §265.171, (f) stored hazardous wastes in an unclosed drum in violation of 40 C.F.R. §265.173(a), (g) stored ignitable hazardous wastes within 50 feet of the facility property line in violation of 40 C.F.R. §265.176, and (h) otherwise handled and stored hazardous wastes in a drum in a manner which may rupture the container or cause it to leak in violation of 40 C.F.R. §265.173(b).

10. On November 9, 1982, EPA issued to Debevoise an administrative complaint, proposed compliance order, and notice of opportunity for hearing pursuant to Section 3008 of RCRA, 42 U.S.C. §6928. This administrative action was based on violations of the hazardous waste management regulations discovered in the course of the June 15, 1982 inspection of Debevoise set forth in paragraph 9 above and proposed the assessment of a civil penalty of \$11,500.00.

11. On March 21, 1983, an administrative Consent Agreement was entered into by EPA and Debevoise and a Final Compliance Order was issued. In this Consent Agreement, Debevoise agreed to a \$7,500.00 penalty, which Debevoise paid on April 5, 1983. The Order required compliance with the RCRA Interim Status Standards then being violated by Debevoise by setting forth the following directives that Debevoise shall: (a) immediately keep all drums containing hazardous waste closed during storage in accordance with 40 C.F.R. §265.173(a), (b) move inside the facility property line all drums of hazardous waste stored outside the facility property line in accordance with 40 C.F.R. §265.14, (c) develop, follow, and submit to EPA a written schedule of inspections in accordance with 40 C.F.R. §265.15, (d) clean up all hazardous wastes that leaked from containers inside and outside the facility in accordance with 40 C.F.R. §265.31, (e) develop and maintain

aisle space in all areas of the facility in accordance with 40 C.F.R. §265.35, (f) transfer hazardous wastes from containers not in good condition to containers that are in good condition in accordance with 40 C.F.R. §265.171, (g) ensure that containers of hazardous wastes are not stored or handled in a manner which may rupture the container or cause its contents to leak in accordance with 40 C.F.R. §265.173(b), (h) relocate and store ignitable hazardous wastes at least 50 feet from the facility property line in accordance with 40 C.F.R. §265.176, (i) operate the facility so as to prevent unknown/unauthorized entry of persons to the facility in accordance with 40 C.F.R. §265.14, (j) submit to EPA documentation concerning personnel training pursuant to 40 C.F.R. §265.16, (k) submit to EPA a contingency plan, pursuant to 40 C.F.R. §265.51, designed to minimize hazards to human health or the environment in the event of any unplanned release of hazardous wastes to the environment, (l) submit a written operating record to EPA in accordance with 40 C.F.R. §265.73, and (m) submit to EPA a written closure plan pursuant to 40 C.F.R. §265.112.

12. On May 31, 1983, at the time when EPA conducted a follow-up inspection of the Debevoise plant in Brooklyn, Debevoise was in violation of the following requirements of RCRA subtitle C including its implementing hazardous waste management regulations and/or the Final Compliance Order described in Paragraph 11 above:

a. 40 C.F.R. §265.15(a) minimum requirements for regular inspections of hazardous waste treatment, storage and/or disposal facilities. Approximately 20 drums of sludge were clustered so closely together that an adequate inspection could not be made by EPA inspectors and the owner or operator of Debevoise. Debevoise violated 40 C.F.R. §265.15(a).

b. 40 C.F.R. §265.173(a) requirement that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. A number of 5-gallon paint cans containing, on information and belief, hazardous wastes were found not to be closed. Debevoise violated 40 C.F.R. §265.173(a).

c. 40 C.F.R. §265.15 requirement that a TSD facility maintain a schedule of inspections. Debevoise did not maintain any such schedule. Debevoise violated 40 C.F.R. §252.15.

d. 40 C.F.R. §265.16 requirement that a TSD facility provide documentation to EPA showing that its personnel have adequate training. Debevoise did not provide such documentation. Debevoise violated 40 C.F.R. §265.16.

e. 40 C.F.R. §265.51 and 265.53 requirements that a TSD facility establish a contingency plan and submit same to EPA. Debevoise had not established such a plan nor submitted

such a plan to EPA. Debevoise violated 40 C.F.R. §§265.51 and 40 C.F.R. §265.53.

f. 40 C.F.R. §265.73 requirement that a TSD facility maintain an operating record. Debevoise did not maintain an operating record. Debevoise violated 40 C.F.R. §265.73.

g. 40 C.F.R. §265.112 requirement that a TSD facility establish a closure plan. Debevoise did not establish a closure plan. Debevoise violated 40 C.F.R. §265.112.

13. On November 16, 1983, at a time when EPA conducted another inspection of the Debevoise plant in Brooklyn, Debevoise was in violation of the following requirements of RCRA Subtitle C including its implementing regulations and/or the Final Compliance Order described in Paragraph 11 above.

a. 40 C.F.R. §265.15(a) requirement that adequate aisle space must be maintained in the facility in order that regular inspections may be made in the facility. Aisle space in Debevoise's hazardous waste drum storage area was inadequate thereby preventing an adequate inspection of the containers by both Debevoise and the EPA inspectors. Debevoise violated 40 C.F.R. §265.15(a).

b. 40 C.F.R. §265.15 requirement that a TSD facility maintain a schedule of inspections. Debevoise did not maintain any detail in its inspection log and thereby violated 40 C.F.R. §265.15.

c. 40 C.F.R. §265.51 and 40 C.F.R. 265.53 requirements that a TSD facility establish and submit to EPA a contingency plan. Debevoise violated 40 C.F.R. §265.51 and 40 C.F.R. §265.53 in that it had not established such a plan nor submitted one to EPA.

d. 40 C.F.R. §265.73 requirement that a TSD facility maintain an operating record. Debevoise did not maintain such a record and violated 40 C.F.R. §265.73.

e. 40 C.F.R. §265.16 requirement that a TSD facility provide EPA with documentation showing that its personnel have adequate training. Debevoise did not provide such documentation and thus violated 40 C.F.R. §265.16.

CLAIM FOR RELIEF

14. Section 3008 of RCRA, 42 U.S.C. 6928, provides in pertinent part:

(a)(1) . . . [W]henever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle the Administrator may issue an order requiring compliance immediately or within a specified time or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction

. . .

(g) . . . Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an

amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

15. As set forth in paragraphs 11, 12, and 13 above, Defendant Public Loan Company, doing business as Debevoise, has violated requirements of subtitle C of RCRA including the hazardous waste management regulations and the Order. Pursuant to 28 U.S.C. §1345 and Section 3008 of the Act, 42 U.S.C. §6928, defendant is liable for injunctive relief and civil penalties not to exceed \$25,000 for each day of each violation.

PRAYER FOR RELIEF

WHEREFORE, plaintiff the United States of America, prays that this Court:

A. Order defendant to comply with the requirements of Subtitle C of the Act, including the hazardous waste management regulations and the Final Compliance Order.

B. Assess a civil penalty against the defendant, pursuant to Section 3008 of the Act, 42 U.S.C. §6928, not to exceed \$25,000 per each day of each violation of any requirement of Subtitle C of the Act, including the hazardous waste management regulations and the Order.

C. Award plaintiff the costs of this suit and such other relief as this Court finds just and appropriate.

DATED: Brooklyn, New York, _____, 1984.

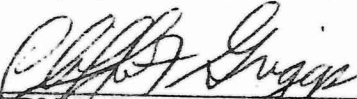
Respectfully submitted,



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